



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

THOMAS A. CONNELLY,)
in his Capacity as Executor of the)
Estate of Michael P. Connelly, Sr.,)

Plaintiff,)

vs.)

4:19-cv-01410-SRC

THE UNITED STATES OF AMERICA,)
DEPARTMENT OF THE TREASURY,)
INTERNAL REVENUE SERVICE,)

Defendant.)

VIRTUAL DEPOSITION OF EVAN K. COHEN

taken on behalf of the Plaintiff

November 25, 2020

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REPORTER: Bo Kriegshauser
CCR MO. LICENSE NO. 735
CSR IL. LICENSE NO. 084-003924
RPR LICENSE NO. 047257

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4	Cross-Examination by Mr. Bresnahan.. 74	4	L. Devereux, Esq., and Ms. Jessica Gottsacker, Esq.,
5	Redirect-Examination by Mr. Devereux 75	5	of the Law Offices of Danna McKittrick, P.C., 7701
6		6	Forsyth Boulevard, Suite 1200, St. Louis, MO 63105.
7	INDEX OF PLAINTIFF'S EXHIBITS	7	
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9		9	The Defendant was represented by Mr. James
10	Ex. 1 12	10	Bresnahan, II, Esq., of the U.S. Department of
11	Ex. 2 13	11	Justice, Tax Division, 555 4th Street, NW, Room 8840,
12	Ex. 3 16	12	Washington, D.C., 20001.
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1	UNITED STATES DISTRICT COURT	1	IT IS HEREBY STIPULATED AND AGREED by
2	EASTERN DISTRICT OF MISSOURI	2	and between Counsel for the Plaintiff and Counsel for
3	EASTERN DIVISION	3	the Defendant, that this deposition may be taken in
4	THOMAS A. CONNELLY,)	4	shorthand by Bo Kriegshauser, a Registered
5	in his Capacity as Executor of the)	5	Professional Reporter, Certified Court Reporter, and
6	Estate of Michael P. Connelly, Sr.,)	6	afterwards transcribed into typewriting, and the
7	Plaintiff,)	7	Witness read and signed the deposition.
8	vs.) 4:19-cv-01410-SRC	8	
9	THE UNITED STATES OF AMERICA,)	9	
10	DEPARTMENT OF THE TREASURY,)	10	COURT REPORTER: Do you swear or affirm to
11	INTERNAL REVENUE SERVICE,)	11	tell the truth, the whole truth, and nothing but the
12	Defendant.)	12	truth?
13		13	THE WITNESS: I do.
14		14	COURT REPORTER: Thank you.
15	VIRTUAL DEPOSITION OF EVAN K. COHEN, produced,	15	
16	sworn, and examined on behalf of the Plaintiff on	16	
17	November 25, 2020, between the hours of 9:30 a.m. and	17	
18	1:05 p.m. of that day, via REMOTE virtual hook-up,	18	EVAN K. COHEN,
19	before Bo Kriegshauser, a Registered Professional	19	of lawful age, produced, sworn, and examined on behalf
20	Reporter and Certified Court Reporter within and for	20	of the Plaintiff, deposes and says:
21	the State of Missouri.	21	
22		22	DIRECT-EXAMINATION
23		23	QUESTIONS BY MR. DEVEREUX:
24		24	Q Okay. Good morning everyone. Just a
25		25	housekeeping matter I think we should take on the

EXAMINATION BY MR. DEVEREUX

<p style="text-align: right;">Page 66</p> <p>1 or becomes incompetent or revokes or disputes the 2 validity or liability under, any guarantee of the 3 indebtedness evident by this note. I see that. 4 Q So my question is, did you understand that 5 when Michael Connelly died, that was a delineated item 6 of default in the promissory note that's contained in 7 Plaintiff's Exhibit 16? 8 A I see that language here, but I didn't -- it 9 wasn't part of my opinion or scope. 10 Q So did you give any credence to the fact 11 that when Michael Connelly died on October 1st, 2013, 12 that Crown C Supply was in default of its loan 13 covenants with Commerce Bank? 14 A No, because in accepting the Anders Minkler 15 valuation I've been told to accept everything, you 16 know, above the treatment of the obligation and the 17 insurance proceeds. And this included that. So I 18 didn't consider a valuation of the debt could be part 19 of my scope. 20 MR. DEVEREUX: Okay. I'm just about done. 21 Could we take about a ten-minute break? Let me just 22 get a little organized here and see if I have any 23 additional questions? I think it will be about 24 another five or ten minutes. Would that be okay with 25 everybody?</p>	<p style="text-align: right;">Page 68</p> <p>1 relates to life insurance proceeds that are received 2 by a company pursuant to a buy/sell agreement? 3 A I don't recall having any understanding. 4 And I didn't need to come up with an understanding 5 because my assignment was, you know, to opine on the 6 fair market value of the -- of Michael Connelly's 7 shares, and that's not a question where I need legal 8 precedent to consider it. You know, it's a question 9 of valuation. 10 Q But don't we as taxpayers and as Internal 11 Revenue Service, don't we rely on court cases to 12 provide guidance as to how we treat particular 13 transactions? 14 A I mean, let's take my baseball card example. 15 You don't need a court decision to figure out that 16 \$100 baseball card its worth \$100. So, I mean I don't 17 know what courts have to do with -- with, you know, 18 what my scope was. 19 Q Well, let's use your example of the baseball 20 card. And let's say that you do sell a baseball card 21 for \$100, and the internal revenue code provides that 22 when anybody sells a baseball card you're taxed at 23 95 percent of the sale price. Would that require the 24 seller of that baseball card to then pay \$95 into the 25 registry of the federal government as a result of that</p>
<p style="text-align: right;">Page 67</p> <p>1 MR. BRESNAHAN: Yes. 2 MR. DEVEREUX: All right. It's 12:34. 3 Let's come back about 12:45. Or in your case, the 4 east coast guys, 1:45. 5 (A break was held.) 6 7 MR. DEVEREUX: Back on. 8 Q (By Mr. Devereux) Mr. Cohen, did you perform 9 any analysis to determine the value of Crown C Supply 10 by comparing any other similarly situated business? 11 A I'm sorry, I was on mute. No. 12 Q Okay. And I think I asked you this, but I 13 want the record to be clear, did anybody during your 14 assignment that culminated in your expert report ever 15 inform you of the case of the estate of Blount versus 16 The Commissioner of Internal Revenue? 17 A Yeah, I thought we discussed that at the 18 beginning that I might have reviewed the case a year 19 ago, but it had no impact on my analysis and opinion. 20 Q Did you ignore the holding in Blount in 21 rendering your opinion? 22 A I didn't even consider the holding of Blount 23 in rendering my opinion. 24 Q Well, when you -- when you reviewed the 25 Blount case, what understanding did you gain as it</p>	<p style="text-align: right;">Page 69</p> <p>1 sale due to the fact that there was an internal 2 revenue code that required it? 3 A It would seem that way. 4 Q So, why -- why was it that you didn't follow 5 the case law that annunciated how insurance proceeds 6 are to be treated pursuant to a buy/sell agreement? 7 MR. BRESNAHAN: Objection. That's calling 8 for a legal conclusion. 9 Q (By Mr. Devereux) Subject to that, sir, you 10 may answer. 11 A Yeah, if the question is what's the fair 12 market value of the baseball card and you know, do an 13 analysis and it's \$100, that has nothing to do with 14 what the proceeds are used for. You know, my question 15 is what's the value of the company or what's the value 16 of the percentage share of the company? Then if there 17 is some legal precedent that has some impact -- you 18 know, it doesn't affect what a willing buyer and a 19 willing seller are going to exchange that for. That's 20 a market determination. Not a legal determination. 21 Q Is it not a legal determination when the 22 court declares that -- in Blount, the Ninth Circuit 23 approved deducting the insurance proceeds from the 24 value of the organization when they are offset by an 25 obligation to pay those proceeds to the estate in a</p>

18 (Pages 66 to 69)

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SIGNATURE PAGE

STATE OF _____)

COUNTY OF _____)

I, _____, do

hereby affirm that I have read the foregoing deposition and agree that said deposition is a true and correct representation of my testimony in this matter, with any changes I have made on the correction page.

EVAN K. COHEN

Subscribed to before me this _____ day
of _____, 2020.

NOTARY PUBLIC

My commission expires: _____

STYLE OF CASE: Thomas A. Connelly, in his Capacity as
Executor of the Estate of Michael P. Connelly, Sr.,
VS. The United States of America, Department of the
Treasury, Internal Revenue Service
TAKEN ON: November 25, 2020
REPORTER: Bo Kriegshauser, RPR, CCR, CSR-IL, CLVS

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CERTIFICATE

I, Bo Kriegshauser, a Registered Professional Reporter and duly Certified Court Reporter within and for the State of Missouri, do hereby certify that there came before me via REMOTE virtual hook-up,

EVAN K. COHEN,
was by me first duly sworn to testify to the truth and nothing but the truth of all knowledge touching and concerning the matters in controversy in this cause; that the witness was thereupon carefully examined under oath and said examination was reduced to writing by me; and that the signature of the witness was NOT waived by agreement of witness and all parties, and that this deposition is a true and correct record of the testimony given by the witness.

I further certify that I am neither attorney nor counsel for nor related nor employed by any of the parties to the action in which this deposition is taken; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

Bo Kriegshauser

21 (Pages 78 to 79)